

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

CARBONITE, INC.,

Plaintiff,

V.

DEEPAK MOHAN,

Defendant.

Civil Action No. 18-12331-MLW

**DEFENDANT’S RESPONSE TO PLAINTIFF’S
MOTION FOR EXPEDITED DISCOVERY**

Defendant Deepak Mohan (“Mohan”) hereby files this Response to Plaintiff’s Motion for Expedited Discovery. Yesterday evening, Plaintiff Carbonite, Inc. (“Carbonite”) filed an Amended Complaint, Motion for Temporary Restraining Order, and additional filings, asserting various new allegations and two additional claims against Mohan. (*See* ECF Nos. 15-20). In light of these new allegations and the now pending TRO motion, the expedited discovery that Carbonite seeks is clearly intended to allow it to develop evidence to further support its request for a TRO, and Mohan should thus be permitted an opportunity to engage in limited discovery on an expedited basis regarding the allegations and evidence Carbonite has just presented to the Court in its TRO filing. As explained in more detail below, Carbonite has not, at this point, consented to Mohan’s proposal for mutual expedited discovery. Thus, Defendant Mohan opposes Plaintiff’s Motion for Expedited Discovery only to the extent that Carbonite refuses to agree to mutual expedited discovery.

Prior to filing this Response today, counsel for Mohan conferred with counsel for Carbonite to inquire as to whether Carbonite would consent to mutual expedited discovery.

Specifically, counsel for Mohan proposed additional limited discovery in the form of depositions of Peter Kohler and Lawrence Friedman, two of the declarants in support of Carbonite's Motion for TRO (*see* ECF Nos. 18, 20), and document requests reasonably limited to (1) all non-privileged documents that either Kohler or Friedman relied on in support of their declarations, and (2) all non-privileged documents that Carbonite creates or discovers prior to the depositions of Kohler and Friedman that relate to, support, or refute Carbonite's allegations that Mohan improperly accessed, used, or took Carbonite files or data. In response, Carbonite was unwilling to consent to or oppose Mohan's proposed mutual expedited discovery. To the extent that Carbonite opposes the proposed mutual expedited discovery, this significantly undermines its claim that court-ordered expedited discovery is warranted in this case. *See Momenta Pharm., Inc. v. Teva Pharm. Indus.*, 765 F. Supp. 2d 87, 89 (D. Mass. 2011) (denying motion for expedited discovery and noting that "Momenta has had the opportunity to obtain at least some information since filing its motion. In a letter to plaintiffs' counsel, Teva stated that it did not oppose expedited discovery provided that it was mutual and limited. Momenta declined that proposal. The fact that Momenta had that opportunity undermines its claim that Court-ordered expedited discovery is necessary."). Moreover, in light of the now pending Motion for TRO, it would be an undue burden upon, and highly prejudicial to, Mohan to allow only one-sided expedited discovery for consideration on the Motion for TRO.

Defendant respectfully requests that the Court allow the mutual, limited discovery as proposed herein, or, in the alternative, deny Plaintiff's Motion for Expedited Discovery for lack of good cause.

* * *

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Defendant Mohan requests oral argument on Plaintiff's Motion for Expedited Discovery.

DEEPAK MOHAN,

By his attorneys,

/s/ Andrew R. Dennington

James F. Kavanaugh, Jr. (BBO # 262360)
Andrew R. Dennington (BBO # 666892)
CONN KAVANAUGH ROSENTHAL PEISCH
& FORD, LLP
One Federal Street, 15th Floor
Boston, MA 02110
(617) 482-8200
jkavanaugh@connkavanaugh.com
adennington@connkavanaugh.com

Brett E. Coburn (Admitted *Pro Hac Vice*)
Georgia Bar No. 171094
Kristen W. Fox (Admitted *Pro Hac Vice*)
Georgia Bar No. 198669
ALSTON & BIRD LLP
1201 West Peachtree Street
Atlanta, GA 30309-3424
(404) 881-7000

Dated: November 30, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was filed electronically on November 30, 2018, and will be served electronically on counsel of record by operation of the ECF system.

/s/ Andrew R. Dennington
Andrew R. Dennington